



HEADQUARTERS MIDDLE EAST REGION  
CIVIL AIR PATROL  
UNITED STATES AIR FORCE AUXILIARY



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**MER LEGAL AFFAIRS STAFF GUIDE: Reviewing contracts**

The following steps are recommended for reviewing and negotiating contracts.

1. **Ask questions.** Legal officers cannot effectively review a contract (or, for that matter, determine if a contract even exists) if they do not know what the transaction involves. When in doubt about what information to gather, get the who, what, when, where, and why.
2. **If it is not already clear, determine if the transaction involves a contract.** This will ultimately be a question of state law. CAPR 70-1, para. 3-6 discusses the elements of a contract, and what does and does not constitute a contract for purposes of Civil Air Patrol regulations.<sup>1</sup> If there is no contract, then it follows that there is no contract to review. If this is the case, then discuss the matter with the client and determine if there are other legal issues that should be addressed before disengaging.
3. **Determine compliance with any other applicable regulation.** For example, there are specific requirements and prohibitions regarding fundraising activities. To the extent that the transaction at issue implicates other regulations, ensure the contract is not inconsistent with those regulations.
4. **Check for proper parties.** The contracting party is Civil Air Patrol, not the wing, squadron, or an individual commander. The authorized signatory usually is Civil Air Patrol's chief operating officer (COO).<sup>2</sup>

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<sup>1</sup> A contract involves promises by each party to the contract. Legal officers should be mindful that some transactions that might seem benign (such as room reservations, equipment rentals, etc.) are likely contracts that require NHQ approval.

<sup>2</sup> Note that wing commanders are no longer authorized to sign contracts unless there is an express delegation to the commander of that authority. See CAPR 70-1, paras. 3-1, 3-6.

5. **Review contract generally.** Ensure the contract adequately describes the transaction and the parties' roles and responsibilities. Review for contingencies and address them. If there is a foreseeable contingency that is not addressed, add it. Review for termination provisions. For leases, check in particular for an adequate description of the space being leased, the access and exclusivity, available utilities and which party pays for them, repair and maintenance responsibilities, premises liability provisions, and term and termination provisions.
6. **Pay close attention to risk allocation provisions.** Although the other provisions discussed above are important, risk allocation provisions are critical, in particular indemnification and release provisions. These provisions often are non-negotiable, but there is sometimes flexibility. At the very least, be aware of the exposure under these provisions so that you can alert NHQ to this potential exposure when the contract is submitted for approval.
7. **Ensure compliance with any peculiar state law or administrative requirements.** For example, if using state-appropriated funds, state agencies sometimes require a form addendum that the state attaches to its own contracts.
8. **Submit the contract to GC for approval.** Usually, the contract is sent to Becky Lee at NHQ/GC.<sup>3</sup>

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<sup>3</sup> The contracting regulation requires finance committee approval and submission through Sertifi for all contracts, regardless of amount. *See* CAPR 70-1, para. 3-6.d. The office of the General Counsel appears to request, in practice, that evidence of finance committee approval be submitted and the contract be sent through Sertifi, regardless of amount. Legal officers should be sure to pass along to those wanting to have NHQ approve contracts this often-missed requirement regarding finance committee approval and submission through Sertifi, even if the consideration under the contract is less than the threshold that would otherwise require finance committee approvals under the finance regulations, *see* CAPR 173-1, para. 9.

This guide is intended as a resource for legal officers in the Middle East Region. If you have suggested additions or other comments, please do not hesitate to contact me at the email address below. The MER legal team wants to make this the best possible resource for our colleagues.

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